UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,151	02/15/2002	Robert A. Falk	OPMX-1-1007	3528

7590 05/22/2003

Michael S. Smith
BLACK LOWE & GRAHAM PLLC
816 Second Avenue
Seattle, WA 98104

EXAMINER	
SOHN, SEUNG C	
ART UNIT	PAPER NUMBER
2878	

DATE MAILED: 05/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/077,151	FALK, ROBERT A.	
	Examiner	Art Unit	
	Seung C. Sohn	2878	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-13 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-13 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 15 February 2002 is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "50", "52" and "54" as discloses on page 4, lines 12-25. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dorsel et al. (Patent No. US 5,585,639).

Referring to claim 1, Dorsel et al. shows in Fig. 1 the following elements of Applicant's claim:

a) a detector (36) for detecting an electrical signal from the scanning microscope (Col. 4, lines 22-31);

b) a bandpass filter (34) for filtering the light signal, wherein the bandpass filter is tuned to a desired range of frequencies (Col. 4, lines 14-21); and

c) a power indicator (24) for detecting and displaying average power of the filtered electrical signal of a corresponding bandpass filter (Col. 5, lines 6-15).

Dorsel et al shows as above, but does not disclose that said filter is for filtering the detected electrical signal. It would have been obvious to one of ordinary skill in the art to use the filter after the detector instead of before the detector in the device of Dorsel et al. for the purpose of simplifying the optical system and such modification would require only a routine skill in the art.

Referring to claim 2, it is inherent that the bandpass filter comprises at least one of a low, medium, or high pass filter.

Referring to claim 3, Dorsel et al. discloses a focusing device (19) for generating a focusing signal based on the detected average power and focusing the scanning microscope based on the generated focusing signal (Col. 5, lines 6-15).

Referring to claim 4, Dorsel et al. discloses that the focusing device automatically performs generating and focusing (Col. 6, lines 49-59).

Referring to claim 5, Dorsel et al. discloses that the scanning microscope is a confocal microscope (Col. 1, lines 64-67).

Referring to claim 6, Dorsel et al. discloses the following steps of Applicant's claim:

a) detecting an electrical signal from the scanning microscope (Col. 4, lines 22-31);

b) filtering the light signal according one or more frequency ranges (Col. 4, lines 14-21);

c) detecting average power of the filtered electrical signal for each of the one or more frequency ranges (Col. 6, lines 49-59); and

d) displaying each of the detected average powers of the electrical signal.

Dorsel et al shows as above, but does not disclose that said filter is for filtering the detected electrical signal. It would have been obvious to one of ordinary skill in the art to use the filter after the detector instead of before the detector in the device of Dorsel et al. for the purpose of simplifying the optical system and such modification would require only a routine skill in the art.

Referring to claim 7, Dorsel et al. discloses that the filtering is performed by one bandpass filter (34) (Col. 4, lines 14-21).

Referring to claim 8, it is inherent that the bandpass filter comprises at least one of a low, medium, or high pass filter.

Referring to claim 9, Dorsel et al. discloses that generating a focusing signal based on the detected average power; and focusing the scanning microscope based on the generated focusing signal (Col. 3, lines 45-48)

Referring to claim 10, Dorsel et al. discloses that focusing comprises automatically focusing (Col. 6, lines 49-59).

Referring to claim 11, Dorsel et al. discloses that the scanning microscope is a confocal microscope (Col. 1, lines 64-67).

Referring to claim 12, Dorsel et al. shows in Fig. 1 the following elements of Applicant's claim:

a) a detector (36) etecting an electrical signal from the scanning microscope (Col. 4, lines 22-31);

b) a bandpass filter (34) iltering the light signal, wherein the bandpass filters is tuned to a desired range of frequencies(Col. 4, lines 14-21); and

c) a focusing device (19) generating a focusing signal based on the filtered signal and focusing the scanning microscope based on the generated focusing signal (Col. 5, lines 6-15).

Dorsel et al shows as above, but does not disclose that said filter is for filtering the detected electrical signal. It would have been obvious to one of ordinary skill in the art to use the filter after the detector instead of before the detector in the device of Dorsel et al. for the purpose of simplifying the optical system and such modification would require only a routine skill in the art.

Referring to claim 13, Dorsel et al. discloses that the focusing device automatically performs generating and focusing (Col. 6, lines 49-59).

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Price et al. (Patent No. US 5,790,710) discloses an autofocus system for scanning microscopy.

Ortyn et al. (Patent No. US 5,892,218) discloses a computer controlled system having an automated microscope with an autofocus system.

Okawara (Patent No. US 6,314,240) discloses a focus compensation lens.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seung C. Sohn whose telephone number is (703) 308-4093. The examiner can normally be reached on Monday through Friday from 8:30 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Porta can be reached on (703) 308-4852. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

SCS

SCS
May 18, 2003

KEVIN PYO
PRIMARY EXAMINER